IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
MARCH 7, 2007 Session

STATE OF TENNESSEE DEPARTMENT OF HUMAN SERVICES v. PRIEST LAKE COMMUNITY BAPTIST CHURCH, ET AL.

Direct Appeal from the Chancery Court for Davidson County
No. 04-1469-I Claudia Bonnyman, Chancellor

No. M2006-00302-COA-R3-CV - Filed on June 25, 2007

This case involves a church that operates a "Bible School" program on weekdays for approximately twelve hours, which cares for many children. The church operated its Bible School for four years without a license, until the Department of Human Services investigated and informed the church of Tennessee's child care licensing requirements. The church still did not seek a license, and it continued to operate its Bible School despite an injunction prohibiting the church from operating without a license. The church and certain members were eventually held in contempt of the court's injunction. The trial court entered a permanent injunction preventing the church from operating its Bible School unless or until it obtained a license. The church appeals, claiming that the licensing requirement and certain regulations applicable to licensed child care centers violate its constitutional right to free exercise of religion. For the following reasons, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., joined. AND W. FRANK CRAWFORD, P.J., W.S., did not participate.

Randle S. Davis, Nashville, TN, for Appellants

Michael E. Moore, Acting Attorney General and Reporter; Pamela A. Hayden-Wood, Senior Counsel, Nashville, TN, for Appellee

OPINION

I. FACTS & PROCEDURAL HISTORY

Priest Lake Community Baptist Church ("the Church") is located in Nashville, Tennessee. The Church operates Priest Lake Bible School ("the Bible School") from 6:00 a.m. to 6:00 p.m., Monday through Friday, during the regular school year from approximately August until May. Children arrive and leave at various times throughout the day and can stay for any number of hours based on the parents' needs. The Bible School enrolls children ages one to sixteen, and school-aged children are transported to and from their schools by Church staff members. On days when schools are closed, the children can stay at the Church all day. The Bible School enrollment mostly consists of children of church members, but a few children are non-members who belong to other churches. The Church charges a weekly fee per child that varies by age. If the child only stays at the Church before or after school, the rates are reduced. While at Bible School, children learn Bible stories, scriptures, and songs, create Bible related arts and crafts projects, participate in learning centers, improve their writing, math, and reading skills, receive help with their school homework, play inside and outside, take naps, and eat meals and snacks. The Church also operates a separate but similar Summer Bible Camp from approximately mid-May to mid-August.

The Church began operating the Bible School in 2000. In 2004, the Church's pastor, Harold Frelix, Sr. ("Pastor Frelix"), contacted the fire department to determine whether the Church's facilities were in compliance with local fire codes. A fire inspector from the Metro Fire Prevention Bureau determined that the Bible School was subject to "day-care occupancy" standards of the safety code, and she found a number of fire code violations during her inspection. An official notice of the code violations was provided to the Church on May 11, 2004. Apparently, the fire department also informed the Department of Human Services that the Church appeared to be operating a child care facility without a license.

On May 11, 2004, members of the Department of Human Services ("DHS") visited the Bible School. They observed 36 preschool-aged children being cared for, and they were informed that older children would be returning from school that afternoon, for a total of 61 children enrolled that day. The DHS evaluators concluded that the Church was operating a "child care agency" that was subject to licensure pursuant to T.C.A. § 71-3-501, *et seq.* A letter was hand-delivered to Pastor Frelix on May 12, informing him of DHS's conclusion and the applicable licensing laws. The letter stated that if the Church continued to operate the Bible School without a license beyond May 13, DHS would pursue a court-ordered injunction. The Church did not apply for a license, and DHS representatives observed children being dropped off at the Church the following week.

On May 17, 2004, DHS personnel met with individuals from the Church to discuss the licensing requirement. The Church representatives asked to be allowed to refrain from seeking a license because declaring its ministry to children to be a "daycare" would violate the Church's religious beliefs. Instead, the Church offered to contract or register with the State of Tennessee, obligating it to comply with certain standards dealing with the health, safety and welfare of the

children, but not to any criteria the Church deemed to be in contradiction to its religious beliefs and practices. The representatives of DHS informed the Church that the licensing laws did not afford DHS the discretion to grant such a request.

On that same day, DHS filed a complaint seeking injunctive relief against Priest Lake Bible School, its Director, Marva Coward, and Pastor Frelix, in the Chancery Court of Davidson County. Specifically, the complaint alleged that the defendants could keep no more than four children for more than three hours per day without some type of license, and that DHS staff had observed 36 children at the Church and were told that 61 were enrolled for that day. Therefore, DHS claimed that the defendants were operating a child care agency without a license in violation of T.C.A. § 71-3-501, *et seq.* The chancery court immediately issued a restraining order that enjoined the Bible School from "opening or operating any child welfare agency without a proper active license issued by the Tennessee Department of Human Services."

On May 18, 2004, DHS filed a motion for an ex parte order of inspection allowing it to inspect the Church's premises to determine if the School was still in operation. The trial court issued the ex parte order of inspection based upon sworn proof that the Church's officers had voiced their intention not to comply with the restraining order, that news media reports indicated that the Church had accepted children at the School that morning, that DHS counselors were informed that persons on the premises were carrying firearms, and DHS evaluators had been denied access to the premises.

On May 19, 2004, DHS staff members returned to the Church with the order of inspection, accompanied by members of the Davidson County Sheriff's Department. They were allowed to enter the premises, and members of the Church – Michelle Thomas and Charles Bennett – informed them that the Bible School was still open from 6:00 a.m. to 6:00 p.m., Monday through Friday, with more than 100 children enrolled. DHS staff members observed 13 children being cared for at the Bible School. In addition, they saw the attendance form or sign-in sheet from the previous day, which indicated that children were present on that day as well.

That afternoon, DHS filed an amended complaint in chancery court, naming the Church, the Bible School, Pastor Frelix, Michelle Thomas, and Charles Bennett as defendants.[1] The complaint included allegations based on the recent inspection, and DHS filed supporting affidavits of the DHS inspectors along with literature provided by the Church that described many aspects of its Bible School program. The complaint sought a temporary injunction and asked that a permanent injunction be entered upon the final hearing.[2] DHS subsequently filed the affidavit of Anne Turner,

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[1] For purposes of our discussion, we will refer to the appellants, Priest Lake Community Baptist Church, Priest Lake Bible School, Pastor Harold Frelix, Sr., Michelle Thomas, and Charles Bennett, collectively as "the Church."

[2] On May 20, 2004, the Church, in a limited and special appearance, filed a motion to dismiss the complaint and restraining order. As previously noted, the complaint and original restraining order referred to the defendant as "Priest Lake Bible School," and the Church claimed that it had no authority to be bound on behalf of an entity identified as "Priest Lake Bible School." That same day, the chancellor issued another restraining order, finding that the prior order

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its Director of Child Care Licensing, who stated that the Church's Summer Bible Camp program had received an exemption from the licensing requirement. However, she clarified that the summer camp exemption was limited to 90 days, and the Bible School operating during the regular school year was still subject to licensure.

The Church, together with the various individual defendants, filed an answer to the amended complaint that set forth various affirmative defenses. Relevant to this appeal, they denied operating a "child care agency" and claimed that they were "exercising their constitutional rights with respect to the freedom of religion."

The trial court held a hearing on the matter on May 27, 2004, and it orally announced its findings of fact and conclusions of law on the following day. Although there was no court reporter present at the hearing, the court's findings were set forth in a temporary injunction issued on June 18. At the hearing, the Church had argued that it qualified for one of the specific statutory exemptions from licensing: for "nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis . . . ." in T.C.A. § 71-3-503(a)(12). The court found that the exemption did not apply to the type of care provided by the Church because the Church was providing long-term child care, and the exemption contemplated short-term care. The trial court specifically noted that religiously motivated conduct is subject to reasonable control, and "[i]f the State Legislature had intended to exempt from its regulation child care provided at the Church, it could have done so with the general statement that care provided at churches do [sic] not require a license."

In sum, the trial court concluded that the Church's Bible School met the definition of a "child care center" under T.C.A. § 71-3-501, it did not qualify for an exemption, and it required licensure by DHS in order to operate during the regular school year. As such, the Church was temporarily enjoined from operating its "regular school year" Bible School unless or until it became licensed by DHS.

On August 23, 2004, soon after the Church's summer camp exemption ended, several DHS staff members went to the Church to inspect its facilities. The Church had not applied for a license to operate its Bible School, yet staff members observed 11 children present, and their sign-in sheet indicated that 10 children had been transported to schools. They also observed the sign-in sheets from the previous two weekdays, which revealed that 28 children were present one day, and 25 children the next. DHS then filed a petition seeking to have the Church held in contempt for violating the temporary injunction.

The trial court held a hearing on September 7, 2004, and it found that the Bible School was "populated and taught by the same number of children and caregivers as it was in May 2004 at the

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[2](...continued)
addressing the Bible School should remain in effect and that the Church, specifically "Priest Lake Community Baptist Church," should also be included.

time of the temporary injunction." The court found that the Church had the financial capability to seek a license if it so chose, and that the Church's failure to obey the temporary injunction was willful. The court entered an order finding the Church, Pastor Frelix, and Kim Frelix, a teacher and caregiver at the church, in contempt of the temporary injunction. Each was fined $50.00. An agreed order was entered on October 5, 2004, declaring that the Church had ceased to operate its Bible School and was in compliance with the court's orders.

On November 17, 2005, the Church filed a "Motion to Reconsider and for Entry of Final Judgment," asking the court to reconsider its previous orders, dissolve the injunction, and set aside the contempt orders. A hearing was held on December 2, 2005, and the court denied the motion to reconsider on December 12. Both parties' counsel agreed that the court had heard all the pertinent facts and asked the court to enter a final judgment. The trial court affirmed its previous orders and converted the temporary injunction to a permanent injunction on January 19, 2006. The Church filed its notice of appeal to this Court on February 2, 2006.

II. ISSUES PRESENTED

Appellants have timely filed their notice of appeal and present the following issues, as we perceive them, for review:

1. Whether the applicable licensing requirements, together with the applicable rules and regulations, which were relied upon by DHS and which were the basis for the injunctions issued against the Church, violate the defendants' constitutional rights.
2. Whether the trial court erred in failing to find that the Church's ministry to children is a religious activity in and of itself or associated with religious services or related activities.
3. Whether DHS acted in a discriminatory manner in its application of the licensing requirements of T.C.A. §§ 71-3-501 and 71-3-503 to the Church and its ministries.

For the following reasons, we affirm the decision of the chancery court.

III. STANDARD OF REVIEW

On appeal, a trial court's factual findings are presumed to be correct, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d) (2006); ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001). We review a trial court's conclusions of law under a *de novo* standard upon the record with no presumption of correctness. ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)).

IV. DISCUSSION

Tenn. Code Ann. § 71-3-501 (Supp. 2006) provides the following definitions relevant to this appeal:

> (3) "Child care" means the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day;
>
> (4) "Child care agency" or "agency" means . . . a place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", as those terms are defined in this part, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day;
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> (5) "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; . . .

All persons or entities operating a child care agency must be licensed by DHS as a child care agency, unless exempt as provided in § 71-3-503. Tenn. Code Ann. § 71-3-502(a)(1) (Supp. 2006). Pursuant to its authority under Tenn. Code Ann. § 71-3-502, DHS has issued extensive regulations applicable to licensed child care centers "for enforcement of appropriate standards for the health, safety and welfare of children in their care."

Because the Church was providing "child care," in the sense that its staff supervised, protected, and met basic needs, for at least 13 children for more than 3 hours per day, the Church's Bible School met the definition of a "child care center" under Tennessee's child care licensing laws. In the lower court, the Church argued that it qualified for one of the specific exemptions set forth in Tenn. Code Ann. § 71-3-503, but the trial court disagreed, and the Church has not presented that argument on appeal.

The Church maintains that the licensing requirement and its regulations violate its constitutional right to free exercise of religion. First of all, the Church firmly rejects the characterization of its program as a "daycare." It acknowledges that many parents seek to have their children attend the Bible School because they want daycare services, but according to the Church, its staff members explain to the parents that it is not a daycare but an "education program." The Church contends that becoming a licensed "daycare" would violate its religious beliefs because it believes that Jesus Christ is the founder of the Church, and that the Church should not be assigned to an entity such as the State of Tennessee. The Church also claims that requiring it to comply with two specific regulations would be unconstitutional – the educational requirements for a program director, and what the Church describes as the "educational content rule."

According to the applicable regulations, the director of a child care center must meet one of the following requirements: (i) graduation from an accredited four-year college with one year of work experience in a group setting; (ii) two years of college training in certain fields with two years of experience; (iii) high school diploma or its equivalent and a childcare training certificate with four years of experience; or (iv) continuous employment as a child care center director or child care agency owner since July 1, 2000. Tenn. Comp. R. & Regs. 1240-4-3-.07(4)(a). The so-called "educational content rule" provides that "[a] daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities *such as* art, music, literature, dramatic play, science, and health." Tenn. Comp. R. & Regs. 1240-4-3-.09(7)(b) (emphasis added).

A. Standing

First we must address the issue of the Church's standing to challenge the constitutionality of the two regulations. The standing doctrine is a judge-made doctrine based on the idea that "[a] court may and properly should refuse to entertain an action at the instance of one whose rights have not been invaded or infringed." ***Mayhew v. Wilder***, 46 S.W.3d 760, 766-67 (Tenn. Ct. App. 2001) (quoting 59 Am. Jur. 2d *Parties* § 30 (1987)). The doctrine of standing restricts the exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, to litigants who can show "injury in fact" resulting from the action which they seek to have the court adjudicate. ***American Civil Liberties Union of Tennessee v. Darnell***, 195 S.W.3d 612, 620 (Tenn. 2006) (citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)). "Without limitations such as standing and other closely related doctrines the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." ***Id.*** (citations and footnote omitted).

> [I]t is a well-settled rule that an Act of the Legislature is presumed to be constitutional and within legislative power, and unless those who attack the constitutionality of the Act show themselves to be within a special class, which on account of the Act suffers some special financial loss or damage to their property, which is not common to all citizens affected by the Act, they may not successfully assail the constitutionality of the Act.

State ex rel. Turner v. Wilson, 196 Tenn. 152, 155, 264 S.W.2d 796, 798 (Tenn. 1954). The first indispensable element that must be shown in order to establish standing is that the plaintiff suffers a "distinct and palpable injury: conjectural or hypothetical injuries are not sufficient." ***Darnell***, 195 S.W.3d at 620. "In determining whether the plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an injury in fact, economic or otherwise, which distinguishes that party, in relation to the alleged violations, from the undifferentiated mass of the public." ***Mayhew***, 46 S.W.3d at 767 (quoting 32 Am. Jur. 2d *Federal Courts* § 676 (1995)). The person challenging the constitutionality of a statute must show "that he

personally has sustained or is in immediate danger of sustaining, some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally." ***Id.*** (citing *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn. Ct. App. 1980)). A person has no standing to contest the constitutionality of a statutory provision unless the provision he claims to be deficient has been used to deprive him of his rights. ***State v. Johnson***, 762 S.W.2d 110, 118 (Tenn. 1988); ***In re Adoption of M.J.S.***, 44 S.W.3d 41, 58 (Tenn. Ct. App. 2000). The injury or threat of injury must be both "real and immediate" and not "conjectural or hypothetical." ***Tennessee Dep't of Health v. Boyle***, No. M2001-01738-COA-R3-CV, slip op. at 4-5 (Tenn. Ct. App. Dec. 19, 2002) (citing *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)).

By way of example, in ***Price v. State***, 806 S.W.2d 179, 181 (Tenn. 1991), several plaintiffs challenged certain requirements that must be met in order to obtain a license or permit under the Adult-Oriented Establishment Registration Act, T.C.A. § 7-51-1101, *et seq.* However, there was nothing in the record to indicate that the plaintiffs would be deprived of the possibility of obtaining a license because of the requirements they challenged. ***Id.*** The Court concluded that without such a showing, the plaintiffs could not be injured by the requirements and therefore they lacked standing to challenge them. ***Id.***

Based on these principles, we fail to see how the Church has alleged facts sufficient to show that it has standing to complain about the effect of the program director educational requirements or the "educational content rule." When Pastor Frelix was asked whether he thought the Church could meet the requirements for obtaining a license, he replied, "I think we probably already do." Neither the Church nor DHS alleged that the Church's current program is in violation of these two regulations, and the Church did not show that it has sustained or is in immediate danger of sustaining any injury on account of these regulations.

Regarding the director educational requirements, the Church did not present evidence or even vaguely allege that the regulation prevented it from employing its current bible school director, or that the Church was unable to comply with the regulation. In discussing the educational requirements, Pastor Frelix testified,

> Just what we have read concerning the requirements for four years of college and the requirements of different kinds of – for various teachers and so forth. We saw some things there that quite frankly alarmed me. I am concerned anytime someone comes out of the academic setting as if that gives them the propensity or capacity to teach our children. They not only – not that that is a bad thing, but it certainly isn't a requirement we would want or call for. We would be more concerned about the faith, about the Holy Spirit.

It is unclear from the record before us who currently serves as the Bible School's director. Ms. Marva Coward was sometimes referred to as the director, but sometimes Pastor Frelix referred to

himself as the director. More importantly, there was no evidence presented about either person's educational background, and the Church never contended that this regulation would prevent it from obtaining a license.

Regarding the educational content rule, the Church stated in its motion to dismiss that it was "an existing practice of the Church" to "maintain a rounded, well-balanced daily program consisting of such things as physical education, arts [and] crafts, music, reading, rest and nutrition for all children within the ministry." At one of the hearings, counsel for the Church stated that the Church was concerned about being required to teach science and even the theory of evolution. However, Ms. Turner had stated in her deposition that the "such as" language in the regulation meant that the listed activities were only examples of opportunities that could be offered, and "[t]he way that you can accomplish that is nearly infinite." She stated that DHS merely required developmentally appropriate activities of some type so that children were not, for instance, watching television all day long. A plain reading of the regulation supports Ms. Turner's interpretation of its requirements. Counsel for the Church acknowledged that DHS was not presently requiring it to teach science, but he expressed concerns about whether future DHS employees would someday require it to teach science. This type of hypothetical concern does not confer standing on the Church to challenge the regulation as unconstitutional, as any such argument would not be ripe for our consideration at this time.

We find that the concerns expressed by the Church do not demonstrate that it has suffered an injury in fact or that it faces immediate injury from enforcement of these regulations. Pastor Frelix only stated that the director educational requirement alarmed him, and that it "isn't a requirement we would want or call for." Also, by the Church's own admission, it is "an existing practice of the Church" to basically comply with the educational content regulation. Because the Church's fears or concerns are merely speculative and "common to all citizens affected" by the regulations, the Church lacks standing to challenge these regulations as unconstitutional. Accordingly, we are left with the issue of whether the general requirement that the Church obtain a child care license violates the Church's right to free exercise of religion.

B. "A Religious Activity in and of Itself"

On appeal, the Church asserts that the chancery court erred when it failed to find that the Bible School, which included ministry, was "a religious activity in and of itself" or "associated with religious services or related activities of churches or houses of worship." The Church claims that DHS and the trial court "saw one thing and one thing only when they considered the ministry activities of the Church: a minimum number of children under the care of someone other than their parents for a minimum number of hours." The Church contends that DHS overlooked the true nature of its Bible School program, which is ministry. The Church's argument appears to be based on the premise that, if the Bible School was itself a religious activity, it would somehow not be subject to all or part of the child care licensing requirements.

Both the United States Constitution and the Tennessee Constitution protect an individual's right to free exercise of religion. The Religion Clauses of the First Amendment, which apply to the states through the Fourteenth Amendment, provide that the federal and state governments "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. In addition, Tennessee's Constitution provides:

> That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

Tenn. Const. art. I, § 3. The Tennessee Supreme Court has characterized this section as "practically synonymous" with the clauses in the First Amendment. ***Carden v. Bland***, 199 Tenn. 665, 672, 288 S.W.2d 718, 721 (1956). The Court has consistently construed and applied the "free exercise" protections of the Tennessee Constitution using the same principles employed by the United States Supreme Court in interpreting the First Amendment's Free Exercise Clause. ***State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle***, 63 S.W.3d 734, 761 (Tenn. Ct. App. 2001).

The concept of religious liberty embodies two complementary concepts. ***Medicine Bird***, 63 S.W.3d at 762. First and foremost, it includes "the right to believe and to profess whatever religious doctrine one desires." ***Id.*** (citing *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 877, 110 S. Ct. 1595, 1599, 108 L. Ed. 2d 876 (1990)). Our constitutions place the freedom of belief beyond government control or interference so that the freedom to believe is absolute and inviolate. ***Id.*** "Second, it includes the right to act, or to refrain from acting, in a manner inconsistent with one's religious beliefs." ***Id.*** The "exercise of religion" often involves not only beliefs and profession but the performance of physical acts. ***Employment Div., Dep't of Human Res. v. Smith***, 494 U.S. 872, 877, 110 S. Ct. 1595, 1599 (1990). However, the freedom to engage in religiously motivated conduct is not absolute. ***Medicine Bird***, 63 S.W.3d at 762. The freedom to act is subject to reasonable control for the protection of others. ***Wolf v. Sundquist***, 955 S.W.2d 626, 630 (Tenn. Ct. App. 1997). "[L]aws are made to govern actions, and while they cannot interfere with religious beliefs and opinions, they may interfere with religiously motivated conduct." ***Medicine Bird***, 63 S.W.3d at 762 (citing *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. at 879, 110 S. Ct. at 1600; *Reynolds v. United States*, 98 U.S. 145, 166, 25 L. Ed. 244 (1878)). Some religious acts and practices must yield to the common good. ***Id.*** Therefore, the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability" on

the ground that the law prescribes conduct that his religion proscribes.[3] ***Smith***, 494 U.S. at 879, 110 S. Ct. at 1600.

In this case, the child care licensing laws clearly regulate conduct, not one's beliefs. Therefore, any finding that the Bible School ministry was a "religious activity in and of itself" would not have exempted the Church from the state licensing requirement. The Church must still comply with the licensing law if it is neutral and generally applicable.

C. Neutral and Generally Applicable, or Discriminatorily Applied

"[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." ***Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah***, 508 U.S. 520, 531, 113 S. Ct. 2217, 2226 (1993). To permit otherwise would allow the professed doctrines of religious belief to be superior to the law of the land, and in effect permit every citizen to become a law unto himself. ***Smith***, 494 U.S. at 879, 110 S. Ct. at 1600 (citing *Reynolds v. United States*, 98 U.S. 145, 166-167, 25 L. Ed. 244 (1878)). The possession of religious convictions that contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. ***Id.*** (citing *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 594-95, 60 S. Ct. 1010, 1012-13, 84 L. Ed. 1375 (1940)). "Government simply could not operate if it were required to satisfy every citizen's religious needs and desires." ***Medicine Bird***, 63 S.W.3d at 762 (citing *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 452, 108 S. Ct. 1319, 1327, 99 L. Ed. 2d 534 (1988)). Thus, claims based on religious convictions do not automatically entitle persons to unilaterally establish the terms and conditions of their relations with government, and our constitutions do not give individuals veto power over government actions. ***Id.*** at 763.

Still, government actions are not free from constitutional restraint. ***Medicine Bird***, 63 S.W.3d at 763. A law failing to satisfy the requirements of neutrality and general applicability must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. ***City of Hialeah***, 508 U.S. at 531-32, 113 S. Ct. at 2226. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious

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[3] The Supreme Court adopted this rule in ***Employment Div., Dep't of Human Res. v. Smith***, 494 U.S. 872, 110 S. Ct. 1595 (1990), rejecting the former compelling state interest test applied in free exercise cases. In response to ***Smith***, Congress enacted in 1993 the Religious Freedom Restoration Act (RFRA). 42 U.S.C. §§ 2000bb through 2000bb-4. The RFRA purported to displace ***Smith***, restore and codify the former compelling state interest test, and to apply that test to *all* government acts that "substantially burden" religious exercise, even if the burden results from a rule of general applicability. ***City of Boerne v. Flores***, 521 U.S. 507, 515, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997). However, in ***City of Boerne v. Flores***, 521 U.S. at 532 (1997), the Supreme Court held that the RFRA was unconstitutional as it applied to acts of state and local governments because Congress had exceeded its authority under Section 5 of the Fourteenth Amendment when it passed the RFRA. ***Id.*** at 532-536. As such, the rule announced in ***Smith*** continues to govern our analysis of whether a state law violates a plaintiff's free exercise rights. *See* ***Medicine Bird***, 63 S.W.3d at 763 (applying ***Smith***); *see also* ***Hagy v. Comm'r, Tenn. Dep't of Labor and Workforce Dev.***, No. E2003-01685-COA-R3-CV, slip op. at 5 (Tenn. Ct. App. May 26, 2004); ***Ahkeen v. Parker***, No. W1998-00640-COA-R3-CV, slip op. at 10 (Tenn. Ct. App. Jan. 10, 2000).

beliefs or regulates or prohibits conduct *because* it is undertaken for religious reasons." ***Id.*** at 532, 113 S. Ct. at 2226 (emphasis added). Furthermore, the government cannot interpret, apply, or enforce a facially neutral law in a discriminatory manner. ***Medicine Bird***, 63 S.W.3d at 763. Therefore, we must determine whether the child care licensing laws are neutral and generally applicable,[4] or if the laws were applied in a discriminatory manner as the Church contends.

Neutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied. ***City of Hialeah***, 508 U.S. at 531, 113 S. Ct. at 2226. If the object of a law, whether overt or hidden, is to infringe upon or restrict practices because of their religious motivation, the law is not neutral. ***Id.*** at 533, 113 S. Ct. at 2227; ***Mount Elliott Cemetery Ass'n v. City of Troy***, 171 F.3d 398, 405 (6th Cir. 1999). There are many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. We begin with an examination of the statutory text because "the minimum requirement of neutrality is that a law not discriminate on its face." ***City of Hialeah***, 508 U.S. at 533, 113 S. Ct. at 2227. Then, we must consider whether the licensing laws have been discriminatorily applied as the Church contends.

Tennessee's child care licensing law defines a "child care center" as "*any* place or facility operated by *any* person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; . . . ." Tenn. Code Ann. § 71-3-501(5) (Supp. 2006) (emphasis added). The following programs are specifically exempted from the licensing requirements by Tenn. Code Ann. § 71-3-503:

> (a)(2) Entities or persons *licensed or otherwise regulated by other agencies* of the state or federal government providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;
>
> (3) Pre-school or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, *that are subject to regulation by the department of education or other departments of state government*;

[4] The United States Supreme Court has on occasion held that the First Amendment barred application of a neutral, generally applicable law to religiously motivated conduct in cases that involved not only the Free Exercise Clause, but also other constitutional protections such as freedom of speech and of the press. ***Smith***, 494 U.S. at 881, 110 S. Ct. at 1601. In those cases, the Court adverted to the non-free exercise principle involved. ***Id.*** at 881, 110 S. Ct. 1601, n.1. This case does not present that type of "hybrid" situation because the Church only alleges that its free exercise rights have been violated.

(4) *Private or parochial kindergartens* for five-year-old children if such kindergartens operate on the public school kindergarten schedule;

(5) Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be *subject to regulation by the department of education* pursuant to title 49, chapter 1, part 11;

(6) EDUCATIONAL PROGRAMS. To qualify for an educational program exemption, a child care agency must meet the following criteria:
(A) That the sole or primary purpose of the program is:
(i) to prepare children for *advancement to the next educational level* through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;
(ii) to provide *specialized tutoring services* to assist children with the passage of mandatory educational proficiency examinations; *or*
(iii) to provide education-only services to *special needs children*; and
(B) That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

(7) "Parents' Day Out" or similar programs carried on by churches or church organizations that provide custodial care and services for children of less than school age for *not more than two (2) days in each calendar week* for not more than six (6) hours each day;

(8) RECREATIONAL PROGRAMS. To qualify for a recreational program exemption, a child care agency must meet the following criteria:
(A) That the sole or primary purpose of the program or activity is to provide *recreational services, e.g., organized sports or crafts activities*;
(B) That the sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;
(C) That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;
(D) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

(E) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and
(F) That no individual child could participate in the program or activity:
(i) For more than seven (7) hours per day; or
(ii) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

(9) CAMP PROGRAMS. To qualify for a camp program exemption, a child care agency must meet the following criteria:
(A) That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;
(B) That the program or activity operates exclusively during the summer months and *less than ninety (90) days in any calendar year*; and
(C) That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;

(10)(A) "Casual care" operations consisting of places or facilities operated by any person or entity that provides child care, at the same time, for a minimum of five (5) children, but *less than fifteen (15) children*, who are not related to the primary caregiver, *during short periods of time* that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;
(B) These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;
. . .

(11)(A) Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children

> and that holds membership in good standing with Boys and Girls Clubs of America and that is *certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements* of Boys and Girls Clubs . . .
>
> (12) Nurseries, babysitting services and other children's activities that are *not ordinarily operated on a daily basis*, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

(emphasis added). In summary, a program is exempt if it is: licensed and regulated by other entities and therefore subject to established standards; a private or parochial kindergarten, or providing limited, specialized educational services; providing recreational activities such as sports or crafts; or providing short-term or casual child care. These exemptions do not discriminate against or among religious organizations.

The exemption statute also provides that "if no specific exemption exists" for a program, it may be exempt if there is clear and convincing evidence that the program meets the following criteria:

> (c) [T]he department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:
>
> (1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, *religious* or athletic development, or to provide the child with mental or physical health services;
>
> (2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;
>
> (3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;
>
> (4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as

> a substitute for full-time, before or after school, holiday or weather-related child care; and
>
> (5) If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.
>
> (d)(1) The department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.
> . . .

Tenn. Code Ann. § 71-3-503 (Supp. 2006) (emphasis added). This "catch-all" section again emphasizes the General Assembly's intention to limit exemptions to programs offering limited child care, providing specialized services not typically available in a regulated "child care center." The statute places "religious" development on equal par with other examples of accepted specialized opportunities, but it provides that including a specialized component in a program that primarily constitutes child care is not sufficient to qualify for an exemption. We therefore conclude that the licensing statute does not textually discriminate against religion or religious groups.

Still, we must determine whether the licensing laws are generally applicable, or if in practice, religious groups are being subjected to unequal treatment. "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." ***City of Hialeah***, 508 U.S. at 534, 113 S. Ct. at 2227. The effect of a law in its real operation is strong evidence of its object. ***Id.*** at 535, 113 S. Ct. at 2228. However, an adverse impact will not always lead to a finding of impermissible targeting. ***Id.*** A social harm may have been a legitimate concern of government for reasons quite apart from discrimination. ***Id.*** "The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause." ***Id.*** at 543, 113 S. Ct. at 2232.

The evidence presented on the licensing law's operation does not lead us to the conclusion that the law is being applied in a discriminatory manner. The DHS Director of Licensing, Ms. Anne Turner, testified that approximately 3,800 child care agencies were licensed and regulated by DHS. Of those 3,800, approximately 662 agencies identified themselves as providing a faith-based curriculum. The Church presented no evidence to suggest that any similarly situated non-religious programs or schools were allowed to operate without a license. Neither did the Church contend that any other religious groups were treated differently than the Church. Furthermore, the Church did not complain that it was targeted because of its religious beliefs or practices, or based on religious animus. In fact, the Church plainly stated that DHS "saw one thing and one thing only when they considered the ministry activities of the Church: a minimum number of children under the care of

someone other than their parents for a minimum number of hours." There is simply nothing in the record to support a finding that DHS acted in a discriminatory manner.

As the basis of its discrimination argument, the Church relies on certain statements made by DHS officials during their investigation and this case. As previously discussed, DHS representatives met with members of the Church in May 2004 to discuss the licensing requirement. When the Church asked to be allowed to "contract or register" with the State and follow only some of the regulations, DHS representatives replied that they had no discretion to grant that type of request. The licensing statute was amended the following year, and certain provisions about the procedure for obtaining a licensing exemption were changed. Where the statute previously provided that the licensing provisions "do not apply to" the exempted categories, it now provides that a program is exempted "upon demonstration of clear and convincing evidence that it meets one (1) of the following exemptions . . . ." Tenn. Code Ann. § 71-3-503(a)(1) (Supp. 2006). The statute goes on to say that "[a] child care agency claiming an exemption pursuant to this section *may* submit to the department's licensing director, or designee, a sworn, written request for exemption . . . ." Tenn. Code Ann. § 71-3-503(e) (Supp. 2006) (emphasis added). The Church contends that this new language requires all programs that were formerly exempt automatically to now file an application for exemption. During her deposition, Ms. Turner agreed that a literal reading of the statute would support the Church's interpretation, but that DHS had to interpret the statute in a reasonable manner, and it was not closing down all formerly exempt organizations that had not yet filed a written request for exemption. Instead, DHS was requiring a formal exemption request after receiving a complaint about a program, if it investigated and found that the program met the basic definition of a "child care agency." The Church now claims that the State has engaged in "discriminatory interpretation and application" of the licensing law so that the Church was held to a standard and procedure that was not applied to those organizations which should now have to file a request for exemption.

In our view, these statements of DHS representatives do not amount to the type of "discrimination" sufficient to prove that the licensing laws have targeted religious conduct for distinctive treatment. The Church still does not contend that any other group – religious or non-religious – was allowed to merely contract or register with the State as it requested. There is no indication that any other group was allowed to operate a similar program where children were cared for all day on a daily basis without any type of regulation by any agency. Instead, DHS staff members consistently maintained that they had no discretion to allow anyone or any entity to operate a program such as the Church's without a license. And again, the Church agrees that DHS saw "one thing only," the number of children present for the requisite number of hours. The fact that the licensing exemption procedures were changed one year after DHS filed this complaint against the Church does not affect our free exercise analysis of whether DHS acted in a discriminatory manner in investigating the Church and seeking the injunction. Therefore, we find this argument is without merit.

Finally, at oral argument, the Church claimed that the licensing laws constituted a "system of individualized exemptions" so that the law is not generally applicable and should be subject to strict scrutiny. In ***Smith***, the Supreme Court discussed this issue and the compelling state interest

test previously used in the context of unemployment compensation cases. 494 U.S. at 884, 110 S. Ct. at 1603. A distinctive feature of unemployment compensation programs is that their eligibility criteria "invite consideration of the particular circumstances behind an applicant's employment." ***Id.*** The "good cause" standard used to evaluate why a claimant quit or refused work created a mechanism for "individualized exemptions" in its application. ***Id.*** (citing *Bowen v. Roy*, 476 U.S. 693, 708, 106 S. Ct. 2147, 2156, 90 L. Ed. 735 (1986)). In other words, the unemployment context lent itself to "individualized governmental assessment of the reasons for the relevant conduct." ***Id.*** The Court observed that unemployment benefits were being allowed for at least some personal reasons. ***Id.*** Therefore, the Court pointed out that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without a compelling reason. ***Id.***

In ***Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah***, the Supreme Court again determined that a law represented a "system of individualized exemptions" that had allowed religious practices to be singled out for discriminatory treatment. 508 U.S. 520, 537-38, 113 S. Ct. 2217, 2229. The law at issue prohibited "unnecessarily" killing an animal, but in practice, it was only used to prohibit a certain church from sacrificing animals. ***Id.*** at 537, 113 S. Ct. at 2229. The city's application of the ordinance's "necessity" test devalued religious reasons for the killing by judging them to be of lesser importance than non-religious reasons. ***Id.*** For example, hunting, eradication of pests, euthanasia, and slaughtering for food was consistently deemed "necessary" killing. ***Id.*** The Court determined that "because it requires an evaluation of the particular justification for the killing," the ordinance created a system of "individualized governmental assessment." ***Id.***

In the case at bar, we do not consider the licensing statute to be a system of individualized exemptions that would allow DHS to target religious groups. The statute lists detailed, objective criteria that must be met in order for a program to be exempt, and the "catch-all" provision specifically lists programs providing religious opportunities as entitled to equal consideration. There is no indication that DHS is routinely making subjective assessments of a program's justification for providing child care that would present the opportunity for religious discrimination. As illustrated by the summer camp exemption granted to the Church, any program will be exempt upon a proper showing that it meets one of the detailed statutory exemptions.

The Church claimed that because the statute granted an exemption to certain educational and recreational programs, the statute contained "individualized exemptions" and the Church was entitled to an exemption for a religious program. We disagree.[5] These two exceptions are not

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[5] Other courts have also specifically addressed and rejected this type of argument. In ***Church at 295 S. 18th Street, St. Helens v. Employment Dept.***, 175 Or. App. 114, 125-26, 28 P.3d 1185, 1191-92 (Or. Ct. App. 2001), a church claimed that because an unemployment taxation law provided a list of exemptions, the state was also required to provide one for religious institutions in the absence of a compelling justification for not doing so. The court disagreed, concluding that no system of individual exemptions existed and that the church had misapprehended the nature of "individualized exemptions." ***Id.*** The Oregon statute provided no authority for its enforcing department to create ad

(continued...)

"individualized exemptions" but are confined to defined categories that would not give rise to a manipulable, subjective assessment. Even though there will be some individualized inquiry into whether a program is, for example, preparing children for advancement to the next educational level, providing specialized tutoring, or serving special needs children, this type of limited assessment is not comparable to the "system of individual exemptions" discussed in ***Smith*** and ***City of Hialeah***. In determining whether the criteria for these two exceptions have been met, DHS is not given the opportunity to apply this facially neutral law in a selective, discriminatory manner against religious groups. For example, DHS is not given open-ended discretion to decide which programs are "necessary," have "extraordinary circumstances," or have shown "good cause" for an exemption. The educational and recreational exemptions allow any program, including churches, to operate for these limited educational or recreational purposes if they meet certain defined criteria. Absent evidence that any *similarly* situated non-religious programs were provided an "exemption" that the Church was not, we find that the licensing laws are generally applicable. *See* ***Vandiver v. Hardin County Bd. of Ed.***, 925 F.2d 927, 934 (6th Cir. 1991) (refusing to find system of individual exemptions where school board could choose between two options to apply when admitting transfer student, but plaintiff student presented no evidence that students from nonreligious schools received an "exemption" that he did not). The Church has not demonstrated that DHS is selectively imposing burdens only on conduct motivated by religious belief.

In conclusion, we find that the licensing laws are neutral and generally applicable. There is no evidence that the laws or regulations have been applied to the Church in a discriminatory manner. Therefore, the licensing law need not be justified by a compelling governmental interest even if it has the incidental effect of burdening the Church's religious practice. *See* ***City of Hialeah***, 508 U.S. at 531, 113 S. Ct. at 2226. The licensing requirement is a reasonable means of promoting a legitimate public purpose, and we must uphold it.

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[5](...continued)
hoc, individualized exemptions. ***Id.*** Instead, it defined neutral, generally applicable categories that were or were not considered subject to its requirements, and all applied regardless of the religious beliefs of the workers or the entities. ***Id.***; *see also* ***Hicks v. Halifax County Bd. of Educ.***, 93 F. Supp. 2d 649, 657, n.4 (E.D.N.C. 1999) (existence of a financial hardship exception to a uniform policy did not rise to the level of a "system of individualized exemptions" so that a religious exception was also required).

We also read the "individualized exemption" cases *not* to require a religious exemption or strict scrutiny any time a statute includes exemptions of any kind. It appears that most courts have similarly limited the "individualized exemption" rule to systems designed to make case-by-case determinations. *See* ***Grace United Methodist Church v. City of Cheyenne***, 451 F.3d 643, 651 (10th Cir. 2006) ("Consistent with the majority of our sister circuits, however, we have already refused to interpret ***Smith*** as standing for the proposition that a secular exemption automatically creates a claim for a religious exemption."); ***American Friends Serv. Comm. Corp. v. Thornburgh***, 961 F.2d 1405, 1408-1409 (9th Cir. 1991) (statutory exceptions that excluded entire, objectively-defined categories of employees from the scope of a statute were not "individualized exemptions" within the meaning of ***Smith***.). *But see* ***Fraternal Order of Police Newark Lodge No. 12 v. City of Newark***, 170 F.3d 359, 363 (3rd Cir. 1999) (plaintiffs were entitled to a religious exemption to "no-beard" policy since the department already had categorical secular exemption for medical reasons).

It is true, as the Church contends, that some other states' child care licensing laws provide exemptions to programs operated by religious entities, and these exemptions have been upheld despite challenges under the Establishment Clause.[6] *See* ***Arkansas Day Care Ass'n, Inc. v. Clinton***, 577 F.Supp. 388, 397 (D.C. Ark. 1983); ***Forte v. Coler***, 725 F.Supp. 488, 491 (M.D. Fla. 1989); ***Pre-School Owners Ass'n of Illinois, Inc. v. Dep't of Children and Family Services***, 119 Ill.2d 268, 281, 518 N.E.2d 1018, 1025 (Ill. 1988); ***Forest Hills Early Learning Center, Inc. v. Grace Baptist Church***, 846 F.2d 260, 264 (4th Cir. (Va.) 1988)). These exemptions have been described as a "reasonable accommodation" to religious beliefs. *See, e.g.*, ***Arkansas Day Care Ass'n***, 577 F. Supp. at 396. However, each of these exemptions was established by the state's legislature, not by its courts. There are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause. ***Locke v. Davey***, 540 U.S. 712, 719, 124 S. Ct. 1307, 1311 (2004). As the Supreme Court noted in ***Smith***, "to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts." 494 U.S. at 890, 110 S. Ct. at 1606. In summary, the Tennessee General Assembly could grant a nondiscriminatory religious exemption from complying with the licensing laws if it determined that such exemption was appropriate, but the Federal and Tennessee Constitutions do not mandate such an exemption in this case. *See* ***State v. Loudon***, 857 S.W.2d 878, 882 (Tenn. Crim. App. 1993) (religious exception to law requiring social security number on driver's license could be granted by legislature, but was not mandated by the United States Constitution).

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to Appellants, Priest Lake Community Baptist Church, Priest Lake Bible School, Harold Frelix, Sr., Michelle Thomas, Charles Bennett, and their surety, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE

[6] There are also several states that do not exempt religious entities from child care licensing laws, and these license requirements have been upheld against free exercise challenges similar to the one in this case. *See* ***North Valley Baptist Church v. McMahon***, 893 F.2d 1139 (9th Cir. (Cal.) 1990); ***Darrell Dorminey Children's Home v. Georgia Dep't of Human Res.***, 260 Ga. 25, 25, 389 S.E.2d 211, 212 (Ga. 1990); ***State ex rel. Pringle v. Heritage Baptist Temple, Inc.***, 236 Kan. 544, 549, 693 P.2d 1163, 1167 (Kan. 1985); ***State, Michigan Dep't of Soc. Servs. v. Emmanuel Baptist Preschool***, 434 Mich. 380, 388, 455 N.W.2d 1, 3 (Mich. 1990); ***Health Servs. Div., Health and Env't Dep't of State of N.M. v. Temple Baptist Church***, 112 N.M. 262, 267, 814 P.2d 130, 135 (N.M. Ct. App. 1991); ***State v. Corpus Christi People's Baptist Church, Inc.***, 683 S.W.2d 692, 695 (Tex. 1984). Religious exemptions and the "registration" method suggested by the Church have been considered and rejected as insufficient means of serving states' interests in protecting the health, safety, and welfare of children in child care centers. *See* ***North Valley Baptist Church***, 696 F. Supp. 518, 529 (E.D. Cal. 1988), ***aff'd***, 893 F.2d 1139 (9th Cir. 1990); ***Corpus Christi People's Baptist Church***, 683 S.W.2d at 696.